

this section shall be filed with the Customs officer to whom payment was made. After verification of the pertinent facts asserted in the claim, the application shall be forwarded with any necessary report or recommendation to the appropriate port director. Applications for refund of special tonnage tax and light money (see § 4.20(c)) with the reports and recommendations submitted therewith shall be forwarded by the port director to the Commissioner of Customs for decision. Any refund authorized by the Port Director under paragraph (a) of this section or any refund of special tonnage tax or light money authorized by the Commissioner of Customs shall be made by the appropriate Customs officer. The records of tonnage tax shall be clearly noted to show each refund authorized.

(c) The application shall be a direct request for the refund of a definite sum, showing concisely the reasons therefor, the nationality and name of the vessel, and the date, place, and amount of each payment for which refund is requested. The application shall be made within 1 year from date of the payment. A protest against a payment shall not be accepted as an application for its refund.

(d) When the application is based upon a claim that more than five payments of regular tax at either the 2-cent or the 6-cent rate have been made during a tonnage year, the application shall be supported by a statement from the appropriate Customs officer at the port where the application is submitted and from the appropriate Customs officer at each port at which any claimed payment was made verifying the facts and showing in each case whether refunds have been authorized.

(e) The application shall include a certificate by the owner or by the owner's agent that payment of tonnage tax at the applicable rate has been or will be made for each entry of the vessel on a voyage on which that rate is applicable before the end of the current tonnage year, exclusive of any payment which has been refunded or which may be refunded as a result of such application.

(f) The owner or operator of the vessel involved, or other party in interest, may file with the port Director a peti-

tion addressed to the Commissioner of Customs for a review of the port director's decision on an application for refund of regular tonnage tax. Such petition shall be filed in duplicate within 30 days from the date of notice of the initial decision, shall completely identify the case, and shall set forth in detail the exceptions to the decision.

[T.D. 71-274, 36 FR 21025, Nov. 3, 1971, as amended by T.D. 95-77, 60 FR 50010, Sept. 27, 1995]

LANDING AND DELIVERY OF CARGO

§ 4.30 Permits and special licenses for unloading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.8 of this chapter, and except in the case of a vessel exempt from entry or clearance under 19 U.S.C. 288, no passengers, cargo, baggage, or other article shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.6 of this part), or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden on a vessel destined to a port or place outside the Customs territory of the U.S., including the adjacent waters (see § 4.6 of this part) if Customs supervision of such lading is required, until the port director shall have issued a permit or special license therefore on Customs Form 3171 or electronically pursuant to an authorized electronic data interchange system or other means of communication approved by the Customs Service.

(1) U.S. and foreign vessels arriving at a U.S. port directly from a foreign port or place are required to make entry, whether it be formal or, as provided in § 4.8, preliminary, before the port director may issue a permit or special license to lade or unlade.

(2) U.S. vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to lade or unlade without having to make either preliminary or formal entry at the second and subsequent ports. Foreign vessels arriving at a U.S. port from another U.S. port at which formal entry was made

may be issued a permit or special license to lade or unlade at the second and subsequent ports prior to formal entry without the necessity of making preliminary entry. In these circumstances, after the master has reported arrival of the vessel, the port director may issue the permit or special license or may, in his discretion, require the vessel to be boarded, the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to the Customs officer who boards the vessel, and require delivery of the manifest prior to issuing the permit.

(b) Application for a permit or special license shall be made by the master, owner, or agent of the vessel on Customs Form 3171, or electronically pursuant to an authorized electronic data interchange system or other means of communication approved by the Customs Service, and shall specifically indicate the type of service desired at that time, unless a term permit or term special license has been issued. Arrangements, in the case of a term permit or term special license, shall be made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times they will be needed. An agent of a vessel may limit his application to operations involved in the entry and unlading of the vessel or to operations involved in its lading and clearance. Such limitation shall be specifically noted on the application.

(c) The request for a permit or a special license shall not be approved (previously issued term permits or special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of this section regarding terminal facilities and employee lists, and the required cash deposit or bond has been filed on Customs Form 301, containing the bond conditions set forth in §113.64 of this chapter relating to international carriers.⁶²

⁶² "Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by

When a carrier has on file a bond on Customs Form 301, containing the bond conditions set forth in §113.63 of this chapter relating to basic custodial bond conditions, no further bond shall be required solely by reason of the unlading or lading at night or on a Sunday or holiday of merchandise or baggage covered by bonded transportation entries. Separate bonds shall be required if overtime services are requested by different principals.

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival.

(e) Stevedoring companies and others concerned in lading or unlading merchandise, or in removing or otherwise securing it, shall ascertain that the applicable preliminary Customs requirements have been complied with before commencing such operation, since performance in the absence of such compliance render them severally liable to the penalties prescribed in section 453, Tariff Act of 1930, even though they may not be responsible for taking the action necessary to secure compliance.

(f) The port director may issue a term permit on Customs Form 3171, which will remain in effect until revoked by the port director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage during official hours.

(g) The port director may issue a term special license on Customs Form 3171, which will remain in effect until

the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the act of February 13, 1911, as amended (U.S.C. 1952 edition, title 19 sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. * * * (Tariff Act of 1930, section 451, as amended, 19 U.S.C. 1451)

⁶³⁻⁶⁶ [Reserved]

revoked by the port director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage during overtime hours or on a Sunday or holiday when Customs supervision is required. (See §24.16 of this chapter regarding pleasure vessels.)

(h) A special license for the unlading or lading of a vessel at night or on a Sunday or holiday shall be refused by the port director if the character of the merchandise or the conditions or facilities at the place of unlading or lading render the issuance of such special license dangerous to the revenue. In no case shall a special license for unlading or lading at night or on a Sunday or holiday be granted except on the ground of commercial necessity.

(i) The port director shall not issue a permit or special license to unlade cargo or equipment of vessels arriving directly or indirectly from any port or place outside the United States, except on compliance with one or more of the following conditions:

(1) The merchandise shall have been duly entered and permits issued; or

(2) A bond on Customs Form 301, containing the bond conditions set forth in §113.64 of this chapter relating to international carriers, or cash deposit shall have been given; or

(3) The merchandise is to be discharged into the custody of the port director as provided for in section 490(b), Tariff Act of 1930.

(j) Bonds are not required under this section for vessels owned by the United States and operated for its account.

(k) In the case of vessels of 5 net tons or over which are used exclusively as pleasure vessels and which arrive from any country, the port director in his discretion and under such conditions as he deems advisable may allow the required application for unlading passengers and baggage to be made orally, and may authorize his inspectors to grant oral permission for unlading at any time, and to grant requests on Customs Form 3171 for overtime services.

(l) A permit to unlade pursuant to this part 4 or part 122 of this chapter shall not be granted unless the port director determines that the applicant provides or the terminal at which the applicant will unlade the cargo provides (1) sufficient space, capable of being locked, sealed, or otherwise secured, for the storage immediately upon unlading of cargo whose weight-to-value ratio renders it susceptible to theft or pilferage and of packages which have been broken prior to or in the course of unlading; and (2) an adequate number of vehicles, capable of being locked, sealed, or otherwise secured, for the transportation of such cargo or packages between the point of unlading and the point of storage. A term permit to unlade shall be revoked if the port director determines subsequent to such issuance that the requirements of this paragraph have not been met.

(m) A permit to unlade pursuant to this part 4 or part 122 of this chapter shall not be granted to an importing carrier, and a term permit to unlade previously granted to such a carrier shall be revoked, (1) if such carrier, within 30 days after the date of receipt of a written demand by the port director, does not furnish a written list of the names, addresses, social security numbers, and dates and places of birth of persons it employs in connection with the unlading, storage and delivery of imported merchandise; or (2) if, having furnished such a list, the carrier does not advise the port director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed in connection with the unlading, storage and delivery of imported merchandise within 10 days after such employment. If the employment of any such person is terminated, the carrier shall promptly advise the port director. For the purposes of this part, a person shall not be deemed to be employed by a carrier if he is an officer or employee of an independent contractor engaged by a

carrier to load, unload, transport or otherwise handle cargo.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 68-247, 33 FR 15022, Oct. 8, 1968; T.D. 71-39, 36 FR 1891, Feb. 3, 1971; T.D. 72-189, 38 FR 13975, July 15, 1972; T.D. 73-27, 38 FR 2448, Jan. 26, 1973; T.D. 84-213, 49 FR 41163, Oct. 19, 1984; T.D. 88-12, 53 FR 9314, Mar. 22, 1988; T.D. 92-74, 57 FR 35751, Aug. 11, 1992; T.D. 93-66, 58 FR 44130, Aug. 19, 1993; T.D. 93-96, 58 FR 67316, Dec. 21, 1993; T.D. 94-2, 58 FR 68523, Dec. 28, 1993; T.D. 95-77, 60 FR 50010, Sept. 27, 1995; T.D. 96-11, 61 FR 2414, Jan. 26, 1996; T.D. 93-96, 61 FR 3569, Feb. 1, 1996]

§ 4.31 Unlading or transshipment due to casualty.

(a) When any cargo or stores of a vessel have been unladen or transshipped at any place in the United States or its Customs waters other than a port of entry because of accident, stress of weather, or other necessity, no penalty shall be imposed under section 453 or 586(a), Tariff Act of 1930, if due notice is given to the director of the port at which the vessel thereafter first arrives and satisfactory proof is submitted to him as provided for in section 586(f), Tariff Act of 1930, as amended, regarding such accident, stress of weather, or other necessity. The port director may accept the certificates of the master and two or more officers or members of the crew of the vessel, of whom the person next to the master in command shall be one, as proof that the unlading or transshipment was necessary by reason of unavoidable cause.

(b) The port director may then permit entry of the vessel and its cargo and permit the unlading of the cargo in such place at the port as he may deem proper. Unless its transportation has been in violation of the coastwise laws, the cargo may be cleared through Customs at the port where it is discharged or forwarded to the port of original destination under an entry for immediate transportation or for transportation and exportation, as the case may be. All regulations shall apply in such cases as if the unlading and delivery took place at the port of original destination.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 95-77, 60 FR 50010, Sept. 27, 1995]

§ 4.32 Vessels in distress; landing of cargo.

(a) When a vessel from a foreign port arrives in distress at a port other than that to which it is destined, a permit to land merchandise or baggage may be issued if such action is necessary. Merchandise and baggage so unladen shall be taken into Customs custody and, if it has not been transported in violation of the coastwise laws, may be entered and disposed of in the same manner as any other imported merchandise or may be reladen without entry to be carried to its destination on the vessel from which it was unladen, subject only to charges for storage and safe-keeping.

(b) A bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers shall be given in an amount to be determined by the port director to insure the proper disposition of the cargo, whether such cargo be dutiable or free.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 84-213, 49 FR 41164, Oct. 19, 1984]

§ 4.33 Diversion of cargo.

(a) *Unlading at other than original port of destination.* A vessel may unlade cargo or baggage at an alternative port of entry to the port of original destination if:

(1) It is compelled by any cause to put into the alternative port and the director of that port issues a permit for the unlading of cargo or baggage; or

(2) As a result of an emergency existing at the port of destination, the port director authorizes the vessel to proceed in accordance with the residue cargo bond procedure to the alternative port. The owner or agent of the vessel shall apply for such authorization in writing, stating the reasons and agreeing to hold the port director and the Government harmless for the diversion.

(b) *Disposition of cargo or baggage at emergency port.* Cargo and baggage unladen at the alternative port under the circumstances set forth in paragraph (a) of this section may be:

(1) Entered in the same manner as other imported cargo or baggage;